IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 68 OF 2007

WITH

CIVIL APPLN. NO. 102 OF 2007

Bande Hassan M.Jikri .. Appellant

Vs.

Municipal Corporation of Gr.Bombayu Respondents

Mr. Anil Singh for Anil D. Yadav for appellant.

Mrs. Geeta Joglekar, for BMC.

CORAM: A.M.KHANWILKAR,J.

DATE : 9TH FEBRUARY, 2007.

P.C.

1. Heard Counsel for the parties. Admit.

2. Mrs.Joglekar waives notice for the Respondent-Corporation.

3. As short question is involved in this Appeal, by consent, it is taken up for final disposal. This

Appeal from Order takes exception to the judgment and order passd by the City Civil Court, Greater Mumbai, dated 19th January, 2007 on an unregistered Notice of Motion no.____ of 2007 in L.C. Suit No. 36 of 2007. By this order, the trial Court has declined to grant ad-interim relief claimed by the appellant-plaintiff at the hearing of the Notice of Motion. The appellant filed suit challenging the demoliton action initiated by the Respondent-Corporation by resorting to the provisions of Section 351 of the B.M.C. Act. The notice under Section 351 is in respect of disputed structure with brick masonry wall, A.C. Sheet roof with rolling shutter admeasuring 16.31 m x 8.43 m. and height of 5.0 m + 6.09/2. After receipt of the suit notice, the appellant filed reply before the authority and furnished several documents to substantiate the stand that the suit structure was in existence prior to 1995 and was, therefore a protected structure, in view of plot was notified slum area. The appellant among others relied on the Shops and Establishment Licence issued by the Corporation in the year 1985, N.A. order dated 29.12.1981, copy of the affidavit dated 25.10.1980, copy of proceedings in S.C.Suit No. 5029 of 1984, xerox copy of the lease deed dated 19.9.84, agreement for sale dated 18.1.83, assessment bill of 1980. Besides, reliance was placed on other documents

which, in all 13 in number, were pressed into service by the appellant. The Authority however rejected the claim of the appellant on the sole ground of proof of existence of this strcuture prior to 1.4.1962 i.e. datumline. No deliberation is made by the Authority as to whether the suit structure was protected as it was standing on the plot of land which is declared as slum area. If that issue is answered in favour of the appellant, obviously it will have to be assumed that the structure is a protected structure as there was documentary evidence to support the claim of the appellant that the suit structure was in existence prior to 1995 in the slum area. The trial Court in refusing the ad-interim relief, however proceeded to answer the issue on the reasoning that the appellant had failed to produce photopass which alone can be the basis to establish the existence of structure being in existence prior to 1995. That is the main reason which weighed with the trial Court. The trial Court has also considered that the description of the suit structure is not appropriate.

2. Having considered the rival submissions and going through the documents on record, at this stage of proceedings, for grant of ad-interim relief, the trial Court should have considered the fact asserted by the appellant that the structure was standing on the plot of

land which has been declared as slum area. If so, the structure would be a protected structure as there was prima facie evidence that the same was in existence prior to 1995. The fact that the structure is in existence prior to 1995 is, prima facie, supported by the assessment bill of 1980 and the N.A. order of 1981. Indeed, from these documents, it appears that the original structure was A.C. sheet structure which is now found in the form of brick masonry structure. The fact remains that the existence of structure prior to 1995 at the site can be inferred on the basis of documents submitted on behalf of the appellant. If so, the appellant would be entitled for grant of ad-interim relief.

3. Accordingly, the impugned judgment and order passed by the trial Court is set aside and instead, the ad-interim relief is granted in terms of prayer clause (a) of the Notice of Motion which will operate till the disposal of the Notice of Motion or till such time as would be ordered by the trial Court after hearing both sides. The Notice of Motion will have to be decided on its own merits in accordance with law uninfluenced by any observations made herein.

4. All questions are left open.

Appeal disposed of in the above terms.

5. In view of the order in Appeal, the companion CIvil Application stands disposed of.

(A.M.KHANWILKAR,J.)